

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1455 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NARSIDAS BHAGWANJI

Versus

HEMKUVAR AMBABHAI

Appearance:

1. Civil Revision Application No. 1455 of 1981
MR PM THAKKAR for Petitioner No. 1
MR BA VAISHNAV for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 13/12/2001

ORAL JUDGEMENT

#. Narsidas Bhagwanji the petitioner original defendant tenant has filed this Civil Revision Application under section 29(2) of the Bombay Rent Act challenging the judgment and decree dated 27.4.1981 passed by the learned

Jt. District Judge, Rajkot in Civil Appeal No. 60 of 1980. The learned Judge by his judgment and decree was pleased to dismiss the appeal filed by the petitioner-appellant Narsidas Bhagwanji and confirmed the judgment and decree dated 11.1.1980 passed by the Court of Small Causes at Rajkot in Rent Suit No. 863 of 1979 (old Suit No.. 881 of 1974). The learned Trial Judge by his judgment and decree ordered that the petitioner-original defendant should hand over vacant and peaceful possession of the suit premises to the plaintiff and should pay Rs.35/- per month as mesne profit from the date of the suit.

#. The facts giving rise to this Civil Revision Application are as under:

2.1 There is premises/shop situated on Ramnathpara road in the city of Rajkot. Hemkunvar Ambabhai -the plaintiff-respondent herein is owner of the said shop which is the suit premises and out of the said suit premises, the plaintiff has given on lease one back side room facing the eastern door at a monthly rent of Rs.35/to the petitioner-defendant. The defendant is using the said suit premises for for his gold smith business. To the west of his room there is a shop of the plaintiff and its door abuts towards west on the road. The shop of the plaintiff was used by his son Govindbhai for carrying on the business of hiring out the bicycles. The son of the plaintiff was carrying on his business in a room admeasuring about 10 ft.x 12 ft. which is very small room. It is the case of the plaintiff that because of the shortage of space he was unable to keep his bicycles inside his shop particularly during night and he has to keep his bicycles in the neighboring house. In view of the same the plaintiff required the suit premises reasonable and bonafide. There is a wall between the said suit shop and the first room where the plaintiff's son is carrying on bicycle business. So if the plaintiff obtains the possession of the suit shop he will remove the partition wall and out of two rooms he will make one room wherein all the bicycles can be kept. The defendant was also in arrears of rent for three months from July to August 1974. In view of the same the plaintiff addressed notice dated 25.7.1974 exh.29 terminating the tenancy of the defendant. The defendant tenant gave evasive reply to the notice on 30.8.1974. Thereafter the plaintiff has filed the present suit before the Court of Small Causes at Rajkot.

2.2 The plaintiff contended that he requires the suit premises reasonably and bonafide because the present

premises where his son is carrying on business in bicycles is a small one and he has got 60 bicycles in his shop and therefore, the space in this shop is inadequate to for storing his bicycles.

2.3. The defendant filed written statements at exh.9 and after the plaint was amended the defendant filed written statement at exh. 20 to the amended plaint. It was contended in the written statement that the suit notice is not legal and valid. According to the defendant over and above the suit room he is also occupying the Osri and balcony and another room along with lavatory and for both the rooms the rent is fixed at Rs.43/- p.m. and the total rent is Rs. 78/- p.m. The amount of Rs. 35/p.m. is not the standard rent. So far as the suit premises is concerned, the defendant uses the same as his residence at night because his family consists of 11 members and they all could not be accommodated in the residential room and Osri. He has denied the contention of the plaintiff regarding reasonable and bonafide requirement. The room which is offered to the defendant is not a convenient room for carrying on his business of goldsmith and it is not admitted that it is adequate light and air. He has therefore, prayed that the suit may be dismissed in this behalf.

#. Before the Trial Court the the plaintiff's power of attorney and his son Govindbhai Popatbhai is examined at exh.27. His friend Hasmukhbhai is also examined before the Trial Court to prove that the plaintiff's son is carrying on business of bicycles in this behalf. The defendant did not enter the witness, but his son Dhirajlal Narshidas is examined before the Trial Court. Necessary oral and documentary evidence was also produced and ultimately the Trial Court was pleased to hold that the plaintiff required the suit premises reasonably and bonafide for his personal occupation. As regards balance of convenience the Trial Court held that greater hardship will be caused to the plaintiff if she does not get possession of the suit premises. So far as the standard rent is concerned the Trial Court found that the learned advocate for the defendant has not honestly argued about the same before the Trial Court. However, so far as the arrears is concerned the Trial Court found that Rs.135/is due from the defendant to the plaintiff as arrears of rent. On that ground a decree for possession was passed by the Trial Court.

#. Being aggrieved and satisfied by the judgment and decree passed by the Trial Court, the defendant filed tenant filed Civil Appeal No.60 of 1980 before the

learned Jt. District Judge, Rajkot somewhere on 11.2.1980.

#. When the aforesaid appeal reached hearing before the learned Jt. District Judge, learned advocates for the defendant and plaintiff appeared. The learned advocate for the defendant tried to assail the judgment and decree passed by the Trial Court before the lower Appellate Court. However, the appellate court after going through the evidence-both oral and documentary and after considering the submissions raised by the learned advocates for the landlord and tenant came to the conclusion that the plaintiff requires the suit premises reasonably and bonafide for his personal occupation and greater hardship would be caused to the plaintiff-landlord by refusing to pass the decree of eviction than to the defendant-tenant by passing a decree of eviction. On that ground the Trial Court confirmed the judgment and decree passed by the Trial Court.

#. Being aggrieved and dissatisfied with the aforesaid judgment and decree passed by the learned Jt. District Judge, Rajkot the petitioner-tenant has filed this Revision Application before this Court.

#. When this matter came up for hearing before this Court (Coram: S.L.Talati.J as he was then) this Court issued Rule on this Civil Revision Application and also granted interim relief.

#. When the matter reached hearing before this court, Mr. Dagli learned advocate for Mr. P.M.Thakkar on behalf of the petitioner appeared. The learned advocate has tried to assail the findings of the courts below on various grounds. He submitted that both the Trial Court as well as the lower Appellate Court have committed material irregularity in exercising the jurisdiction vested in them which has resulted into substantial miscarriage of justice to the petitioner. He submitted that the courts below have erred in holding that the respondent-plaintiff is entitled to decree for possession under section 13(1)(g) of the Bombay Rent Act. He further submitted that greater hardship would be caused to the plaintiff-landlord if the decree of eviction is refused. He further submitted that both the courts below ought to have appreciated that on one hand the petitioner tenant and his 11 (eleven) family members would be rendered roofless and he would be deprived of his only source of livelihood and on the other hand the plaintiff

is put to an alleged difficulty for the purpose of storing his bicycles during night time and in the face of these facts, it is obvious that the petitioner tenant would be put to greater hardship than the plaintiff-landlord.

#. Learned advocate for the petitioner has also relied upon the judgment of the Honourable Supreme Court in the case of Gulabhai vs. Nalin Narsi Vohra & ors. reported in AIR 1991 SC 1760 and stated that in eviction suits, in appropriate cases, events subsequent to the filing of eviction suit can be taken notice of and can be duly considered by the court provided the same is relevant in determining the question of bonafide requirement.

##. In view of the aforesaid judgment of the Honourable Supreme Court, learned counsel for the petitioner has stated that the petitioner has filed affidavit regarding subsequent events. Said affidavit is filed on 27.8.2001. In the affidavit it has been stated that since about 10 years and during the pendency of this revision application, respondent's son Govindbhai has given up and closed his bicycle business somewhere in the year 1992. Thereafter he started the business of making silver ornaments in the shop owned by the respondent adjoining to the suit shop. Even today respondent's son Govindbhai is doing the said business of making silver ornaments with about 3 or 4 other workers and the shop owned by the respondent is more than sufficient for his requirements for the said business. He has therefore, contended that the development of these subsequent events have materially changed the position of the parties. It goes to the root of the matter as the respondent-plaintiff no more requires the suit premises for her son Govindbhai or for any other purpose. It is therefore, necessary to take those subsequent events into consideration in the interest of justice by this Court.

##. In support of the aforesaid contention the petitioner has produced two photographs. The photograph no.1 produced herewith will go to show that the respondent and her son have taken out the shutters of their shop and have constructed a wall with two windows. While going inside the shop a board namely 'Arvind Jewellers' is visible at the top of the door of the respondent's shop. The name Arvind Jewellers seem to have been chosen from the name of respondent's grand son Arvind i.e. son of Govindbhai. The respondent has kept the board of Govind Cycle Works outside the shop even though the business of bicycles has been given up since last about 10 years.

##. Mr. B.A.Vaishnav learned advocate for the respondent herein has tried to support the judgment and decree of the courts below in this behalf against the affidavit filed by the other side.

##. Mr. Vaishnav has also relied upon the additional affidavit in reply filed by the petitioner on 20.12.2001. Said affidavit in reply has been filed by Govindbhai Popatbhai Gorwadia in which it has been stated that when the suit was filed in the year 1979, he was aged 45 and at that time he had four sons viz. Jayantibhai, Arvindbhai, Rohitbhai and Haresh and two daughters Jayaben and Pushpa. Govindbhai was doing the business of giving the cycles on rent with his father. With the passage of time, the business of giving cycles on rent dwindled due to advent of motorised two-wheelers, such as scooters and motoer-cycles. With the passage of time his sons have grown in age and have married and desired to establish separately and independently as his grandson Brijesh learnt the trade of silver ornaments and therefore, it was decided to open such business. Govindbhai further stated that his four sons thereafter have grown in age and Jayantibhai is today aged 45 and has two sons-Brijesh and Himanshu. Both Brijesh and Himanshu are married. Brijesh has two sons and Himanshu has one son. Govindbhai has further stated that as the suit shop was given on rent and there was a stay operating of this court against eviction, Jayantibhai who needed place for doing his business as his son Brijesh had learnt the trade, he gave the room on the first floor to open his shop with his son Brijesh and Himanshu. Govindbhai further stated that they are the same room and osri which the petitioner has refused as alternative place as according to him was not convenient for business had to be given to Jayantibhai to begin independent operation as he is living separately from the family of Govindbhai. Govindbhai has further stated that his son Arvindbhai has three daughters of which one is aged 17 Dharmishta, Nikita is 11 years, Shivani is 13 years and son Jeet is aged one year. Govindbhai has further stated that Arvind also wanted to try his hand at job work in silver, he also separately established the shop in the front room. Govindbhai further stated that his youngest son who is aged 40 and has two sons and a daughter also wanted to branch out the businesses but as there was lack of space for him to start the business, he is operating with Arvind, however in the event the suit shop is vacated, Haresh can start his own business. Govindbhai has further stated that his fourth son Rohit is working

with him doing small time business of cloth and they are operating from a rented shop in Devpara. Govindbhai further stated that his mother Hemkuverba, himself and his wife and the family of Arvind, Rohit and Haresh are staying in a three room house and hence in all 18 of them staying in three room house and other ten members of his family i.e. Jayantibhai is staying on the outskirts of Rajkot in two rooms.

##. In view of the same, it was stated that it would be clear that all his sons have become independent in business and therefore, he would need the four shops. Jayantibhai has been operating from the first floor as stated above, Arvind is operating from the front shop, however Haresh is in need of a shop which is the subject matter of the present litigation. Rohit and himself are operating in the business of cloth from a rented premises. Govindbhai has further stated that no hardship will be caused to the applicant-petitioner no.1 as he is carrying on his business from the cellar where is operating even prior to the suit shop given on rent. Govindbhai has further stated that in view of the change in the present scenario if the subsequent events are of any importance, his need for the room for business has become more grave and there is greater hardship to the land lord in view of the fact that all his sons have grown in age and want to establish separately as they have their own independent shops. Govindbhai has further stated that his son Rohit is carrying on business of cloth with him and they have the same kitchen, however, Arvind and Haresh who operate from front shop have separate kitchens and therefore he would need to have a separate shop to be given to Haresh and therefore, will need the suit shop so that during his life all the four sons are established separately.

##. I have gone through the records and proceedings of the case. I have also gone through the subsequent affidavits filed by the parties in this behalf. I have also gone through the evidence on record particularly the evidence of Govindbhai and son and power of attorney of the plaintiff. I have also gone through the evidence of Hasmukhbhai at exh.27 in this behalf. I have also gone through the evidence Dhirajlal the son of defendant no.1.

##. In my view from the evidence on record particularly the additional affidavit filed by the respondent-landlord and by the tenant in this behalf, it is no doubt true that the original demand of having a shop on the ground that he want to carry on business in bicycle disappears. However, the landlord has filed further affidavit which

clearly show that the need of the landlord is greater because he has four sons and two daughters. He has been able to show how his need has increased particularly when all his sons are married and having their children.

##. In view of the aforesaid evidence on record in my view the plaintiff has been able to show that he requires the suit premises for bonafide requirement. I also do not find any infirmity in the reasonings of the Trial Court as well as the lower Appellate Court in this behalf. There is no error apparent on the face of the record. The Trial Court as well as the Lower Appellate Court have given cogent and convincing reasons for arriving at their conclusions. Moreover, the additional affidavit also supports the reasonings given by the Trial Court as well as the lower Appellate Court in this behalf. In view of the same this Civil Revision Application deserves to be dismissed and the same is accordingly dismissed. Interim relief granted earlier stands vacated. Rule discharged. No order as to costs.

(K.M.Mehta.J)

govindan